

Ala. A  
A

ARGUMENT

OF

E. P. ALEXANDER

ON

RAILROAD BILLS

BEFORE

JUDICIARY COMMITTEE LEGISLATURE OF ALABAMA.

—

FEBRUARY, 1881.



GENTLEMEN OF THE COMMITTEE:

In endeavoring to lay before you my views on some of the proposed legislation now under your consideration, I beg leave first to discuss, in as narrow limits as possible, some of the principles involved in the "Railroad Problem," on which there is much popular misconception, and a clear understanding of which is essential to any one honestly desiring to find a practical solution of the difficulties which surround it. These principles will be best brought in order before you, and their bearings illustrated by a discussion of the following questions:

What are the evils complained of in the present system of railroad transportation? How have these evils arisen, and who is responsible for their existence?

What has been or can be done, either by railroads themselves or by legislation, to correct these evils?

The evils may be classed under three heads: First, Extortion, or rates positively too high. Second, Unjust Discrimination, or rates in themselves fair and reasonable, but higher than rates charged other markets. Third, Fluctuations in rates.

Now, of the first of these evils there is very little *general* complaint. It is one of the standard boasts of the press, that in spite of a comparatively sparsely settled country, the average freight tariffs of the United States are the lowest in the world. As our freights have grown in volume, the average rates have been reduced to figures which are both surprising and instructive.

The returns of thirteen of the largest roads in the country, whose freight earnings represent about one-fourth of the total freight earnings of all roads in the United States, show a reduction of about forty-three per cent. in the average rates charged in 1879, from the rates charged in 1873. The tons of freight moved one mile had meanwhile increased about eighty per cent and the gross receipts for moving it increased only three and a half per cent. Surely these figures do not indicate that the railroads as a whole are practicing extortion to any great extent. They were certainly not growing rich very fast in 1873, but the most of them were on the verge of bankruptcy; and in 1879, they were rendering the public eighty per cent. more service, for only three and a half per cent. more gross receipts.

I do not claim for them any particular credit for their moderation in this respect, for they would doubtless have cheerfully accepted ampler returns for such a largely increased service with its attendant expenses; but the fact illustrates that there are laws of trade,

working out their own results with a power which neither individuals nor corporations can successfully oppose; and that the idea that the commerce of the country is at the mercy of the railroad corporations is a mere old woman's tale.

The railroads of the country have no more real power to enforce extortionate rates of freight upon commerce than the shoemakers have to enforce extortionate prices on shoes; grocers on eggs; or farmers on cotton. If they could, at least one road in Alabama might have managed to escape a condition of bankruptcy in the last ten years, but not one did.

As might have been anticipated from the figures above given, where complaints of extortion exist at all, they are generally confined to roads whose business is small. Of course, roads whose business is small must have a larger margin of profit on each transaction than those whose business is large. This is the universal rule in all kinds of business, and I see no reason why the same test should not be applied to a railroad as is applied to individuals, in judging whether or not their profits are extortionate. If they do no more than pay expenses and a profit on the capital invested, proportionate to risk, deterioration and the average profits of successful trade or manufactures, they cannot be called extortionate; and, indeed, if any investment of money is entitled to *liberal* consideration by a community that invested in a railroad should be. For it not only brings to the whole community increased values of real estate, and increased facilities for trade and travel, but in itself it is exposed to greater average risks than any other class of investments. It is unnecessary to stop to show how and why. The history of ninety-five roads out of every hundred will illustrate.

If, therefore, the investors in railroads benefit their neighbors more largely and universally than the average money lenders, and investors in trade and commerce, and at the same time run peculiar risks, they are certainly entitled to expect fair and liberal treatment at the hands of the State, which would otherwise be putting a penalty upon any capitalist who withdrew his money from other investments to help build a railroad, and as in all other enterprises it may be safely assumed that whenever a railroad secures a business which yields it exceptional profits, another railroad will certainly be built to divide them. And in the majority of cases there is not even that much delay.

How many of the railroads now in existence would have been built under laws limiting their earnings, under most favorable circumstances, to eight per cent., and providing no guarantee against loss under unfavorable circumstances?

In this connection there are two ideas which are often discussed in the papers and magazines of the day, upon which I wish to offer a few words. The first is that it would be a very simple matter to make the railroads adopt a system of keeping accounts which should show what it costs

to move a ton of freight, or a passenger, a mile, and then let each road charge that amount with a reasonable profit and no more, and be done with it. The idea is so charmingly simple that it is no wonder it beguiles many persons who have no practical experience in railroad matters; but I find it hard to condense within my limits a sufficient idea of its utter absurdity and impracticability.

Kindred inquiries in other branches of business would be: What does it cost a doctor to prescribe for a headache? a dentist to pull a tooth? a lawyer to give an opinion? an editor to write an editorial? a merchant to sell a pair of shoes? a freedman to pick 100 pounds of cotton? a farmer for his hen to lay a dozen eggs? or, the United States Government to carry a paper of seeds from Mobile to Montgomery? Try to analyze fully and minutely these questions, and imagine an attempt to regulate prices for such services on the results. Even far less sensible and satisfactory to the community would be an attempt to regulate railroad tariffs on any such basis.

As a single illustration of a number of difficulties which would be met, I instance the utter impossibility of satisfactorily dividing many of the current expenses of railroad maintenance and management and assigning its accurate proportion to each of the four ordinary sources of revenue, freight, passengers, express, and mail. What proportions of the salaries of President, Superintendent, Comptroller, Attorney, and all employes, from general officers down to track hands and car greasers, shall be set aside to each of the four departments as the actual expense of conducting it. I am aware that some roads try to do this, but the divisions made are very various, and are all *arbitrary*. One mode of division, which has more plausibility than any other, is to divide these salaries in proportion to the revenues from each department. But a moment's reflection will show that this division is really as arbitrary as any other. For the comparative revenues fluctuate every day, every month, and every year. And mail or express service, for instance, might be discontinued altogether, and many of these expenses not be decreased a cent. Then in the renewal of a cross-tie which will last somewhere from six to ten years, a rail which may last from fifteen to twenty-five years, or an iron bridge which may last fifty to a hundred years, the *future* proportions of business must be guessed at. With so much guessing in the problem, the very few expenses which could be divided satisfactorily would have no value. The result would be about as useful and reliable as the weight of a stack of hay arrived at by weighing one armful and guessing at the rest.

The basis on which prices of transportation must be fixed, as well as the prices paid for the great majority of all services of all kinds, which are bought and sold, is as follows:

The seller of the services estimates, not so much *what it costs him to render* the services, for such an estimate involves inquiry into the cost of

his qualifying himself to render them, and many other questions which can not be definitely answered, but he estimates *what he could save by declining to render them*, and that sum, is the minimum price at which he can sell his services without loss. For a profit he endeavors to secure an additional sum, which, by the universal laws of trade, and with the approval of the common sense and idea of justice of all mankind, *bears some proportion to the value of the services sold*, to the person receiving them.

A recent article on the relations of the railroads to the states, by Judge Black, has, as I conceive, very grossly exaggerated and misrepresented the application of this principle in the adjustment of rates of transportation. The railroads are held up to public indignation, as endeavoring to extort from the community "*all the traffic will bear.*" It is indeed true that what the traffic will bear is one of the elements to be considered in adjusting freight rates, and very properly and even necessarily so. Otherwise, there could be no classification of freights; but a car load of salt would have to pay as much freight as a car load of coffee, guano as much as dry goods, and pig iron, bricks, coal and ice as much as drugs and chemicals, shoes and fancy goods. The uniform rate charged on all shipments would be an average of the present rates. How would the community relish having the rate of freight on shoes reduced even fifty per cent., if the rate on coal was advanced at the same time, even five per cent. The average freight on a pair of shoes from New York to Montgomery, Alabama, is perhaps three cents, and they would not be retailed any cheaper if railroads carried shoes free of cost. But by charging rates for shoes, and such valuable commodities, bearing some reasonable relation to what the traffic will bear, the roads are able to meet many of their fixed expenses of maintenance and management, and be in a position to haul the cheap and heavy freights at rates lower than have ever before been seen in the world, and under which no one can deny that the country is growing rich and prosperous faster than any country in the world.

Again, if the amount of service rendered was the only element to be considered in adjusting freight rates, all rates would have to be proportioned nearly exactly to distances, which would upset commercial relations all over the country. It would, indeed, be far simpler and easier for the railroads if these things were not so. If they could have but one class of freight and one rate per 100 pounds, as wagon trains used to have in the olden times, and as the first railroads even did, it would save them not only great trouble, but great expense, and they could stand it if the community could. But the present complication of rates and tariffs has grown up, as the full uses and capabilities of the railroads have come to be understood, and it has been forced upon the railroads by that inexorable law of trade, that the prices of services will always be regulated in part by their value, as well as by their cost, or, in

other words, they will be to some extent, *proportioned* to what the traffic will bear.

And if the *argumentum ad hominem* is ever legitimate, it may be well asked of Judge Black on what basis eminent members of the Bar charge for their opinions and services. Is it by the hour for the time consumed, or is it "*all the traffic will bear?*" Clients sometimes spitefully say it is on the latter basis, but I prefer to believe that among them even, as among railroads, and in spite of either pools or agreed fee bills, the laws of trade and competition are too strong for either corporations, associations, or individuals; and that although their services are not paid for by the hour, or on the basis of cost, they nevertheless only succeed in getting compensation bearing *a reasonable proportion to the value of the services rendered.*

There is one other consideration worthy of thought in this connection:

There is no rose without its thorn, and very low freight rates, like many other blessings of this life, are not entirely unmixed with evil. While they cheapen foreign products, and benefit those who deal in and consume them, they discourage and frequently destroy many home industries, by bringing them in competition with distant localities which may enjoy superior advantages. For instance: low rates of freight have brought the large manufactories of wagons and agricultural implements of the West so close to our doors that smaller home establishments in the South have almost ceased to survive. Cheap transportation has brought the cheap and fertile lands of the Far West so near to the East that the value of grazing and wheat lands everywhere east of the Mississippi is being affected. Minnesota now furnishes the wheat which formerly came from the Genesee Valley, and Minneapolis grinds the flour which Rochester formerly produced. The results will doubtless accomplish the greatest good to the greatest number, but nevertheless they may disappoint many who are urging them forward from selfish motives.

The second evil of which complaint is made, is unjust discrimination.

The very word, "discrimination" has acquired such an odium in discussions upon railroad tariffs that I wish to emphasize the fact that not only are many discriminations right and proper, but that the great business of transportation is peculiarly dependent upon judicious discriminations, and without them probably one-half of the manufactures and commerce of the country would be brought to a stand-still, and great and sudden changes would be wrought in the value of property and location of business centers.

Some of these essential discriminations have already been referred to. We discriminate between salt and shoes, because a cent a pound makes a great difference to the consumer of salt, but no difference at all to the purchaser of shoes. Instances might be multiplied by thousands. Every

classification is a discrimination. We discriminate whenever we consider at all in fixing a rate, the value of the service rendered to the person who pays for it. Discrimination in itself, therefore, does not deserve the popular odium which is too often attached to the word in discussions of rates of transportation, for *without proper and fair discriminations the cost of transportation could not be distributed where it can be most easily borne*. It would crush out of existence many of the most important industries of the country. It is no pet scheme of railroad managers, but is the most difficult and delicate branch of all their duties, and has been forced upon them with all its attendant expenses by the necessities of manufactures and commerce, which necessities they are forced to understand intimately.

But much of this is tacitly admitted, even by the bitterest assailants of the railroads, who confine their complaints to *unjust* discrimination.

Of course for *unjust* discrimination I have no defense to make and no excuses nor apologies to offer.

But it is not out of order to suggest that human views of justice are always greatly affected by the interest and selfishness of those who sit in judgment. Every commercial community is the bitter and uncompromising rival of every competing commercial community, and will remain so until the millenium is fully inaugurated—long after the lion and the lamb lie down together. Meanwhile, purgatory itself has no position so hopelessly unhappy as that of the railroad manager, charged with giving satisfaction among their conflicting claims and interests.

It is impossible to lay down any general rule to determine what is just discrimination, and what is unjust discrimination, but discriminations will always exist. They have their foundations deep and strong in that discrimination, practiced by the Creator himself, which so excited the admiration of the old minister, in making the large rivers always flow by the large cities.

And an examination of the subject will show that *competition with a water route* is at the bottom of nine-tenths of all the cases of so-called discrimination in the United States.

But surely, railroads should be both permitted and encouraged to compete with water routes, for thereby more roads may be built and sustained, giving transportation facilities to districts that the rivers do not reach.

If discriminations *could* be abolished there is no railroad manager in the country who would not hail their disappearance with unutterable delight; and the result of the experiment would teach the whole country more in a week than all the arguments by amateur railroad reformers will teach in a century. But there is no doubt that to draw the line between just and unjust discrimination is sometimes a difficult and delicate task.



Perhaps it will give a clearer idea of some of the difficulties which arise in questions of this kind to illustrate by one or two examples.

A certain Southern road runs through a country which produces a great deal of turpentine, and has made rates for the distilleries upon its line which are satisfactory, on the whole, to all its customers.

One of those customers is located near a river, beyond which there is a considerable virgin forest of pine. But the difficulty and expense of crossing the river, and its wide swamps, made it impossible for the distiller to bring the products of that forest to his distillery without a loss. He therefore represented the facts to the manager of the railroad, and proposed that if the railroad would reduce its rates upon the turpentine, which he would get *beyond* the river, enough to pay the expense of bringing it over, he would build a ferry and a causeway through the swamp, and bring into cultivation the forest which was inaccessible at the ordinary rates of freight.

The arrangement was made and proved satisfactory and profitable to both parties. The turpentine distiller continued to pay, cheerfully, the original rates upon all products of the forest on his side of the river. For the turpentine he brought across the river at a considerable expense, he paid a lower rate of freight, which left him the same profit as on his original productions. The railroad company got the steady hauling of the products of this forest, which would otherwise have gone to waste and benefited no one. The owner of the forest received a royalty on his trees, bringing him in an income which he could never otherwise have derived. A number of laborers received daily employment which they could not otherwise have gotten. And the whole mercantile community which is interested in naval stores received the benefit of the increased production.

Who was injured?

Nobody that I have ever heard of. Yet, if there had been any *law* against discrimination, that railroad manager could not have made that concession in rates to the distiller, without at the same time reducing his rates for hauling turpentine to every other distillery upon the road.

Such a reduction would have cost him, perhaps, five hundred dollars where it would have made him one dollar.

Now is such a discrimination as this a just and fair discrimination, or is it an unjust one?

I leave the question unanswered; only pointing out that it belongs to a class of discriminations usually considered more obnoxious than any other class. It is a discrimination in favor of a certain individual only. In fact, it is worse than that: the individual is actually given a discrimination against himself.

Thousands of illustrations of this kind might be given by any railroad manager.

I will instance one more discrimination of a different class:

There are perhaps twenty different lines by which shoes may be shipped from Boston to Galveston. They may go direct by steamer to Galveston, or they may go by steamer, either to New York, Philadelphia, Norfolk, Wilmington, Charleston, Port Royal, Savannah or New Orleans, and from either of those ports, complete the journey by rail. Or they may go "all rail" from Boston by any of the numerous lines to the West, and down into Texas by the Memphis & Little Rock Railroad from Memphis, or the Iron Mountain Railway, or the Missouri, Kansas & Texas Railroad from St. Louis. The rail line from Savannah to New Orleans competes for this business, and gets a small portion of it.

Of course the rate upon it is very low, as it is in competition with so many other lines, and with the ocean itself; and as the local rate on shoes for interior points along this line is higher, here exists a discrimination in favor of Galveston on shoes from Boston.

But whom does this discrimination hurt?

- It really benefits the very parties who *seem* to be discriminated against—the shoe merchants of the interior markets of the line—for every dollar that this line of railroad can secure to itself from foreign business goes that far towards bearing its necessary expenses, and enabling it to reduce its rates on local business, and it is not a mere theory that these rates are reduced as its through business increases, as the history of the rates of this line for the last ten years will abundantly show.

Discrimination has therefore distributed, both in Massachusetts and Texas, a part of the burden of supporting the interior railroads of Georgia and Alabama—roads of vital importance and inestimable value to the local communities whom they serve, but whose local business alone could not support them even at double the present local rates.

Examples might be multiplied indefinitely; but these are perhaps sufficient to illustrate how discriminations are necessary to give legitimate freedom of action to the transportation lines of the country, and how difficult to draw the line between the just and unjust.

The railroad laws of England give great freedom in this matter, and recognize and sustain a clearing house, which is practically a pooling arrangement, whereby the evils of *unrestricted* competition are prevented.

In the course of its railroad legislation, the British Parliament has frequently appointed able commissions to investigate and report upon this and kindred subjects.

The following is an extract from the report of the Royal Commission of '65 to '67:

"Inequality of charge in respect of distance, besides being a necessary consequence of competition, is an essential element in the carrying trade: that is to say, the principle which governs the railway company in fixing the rate is that of *creating a traffic*, by charging such a sum for conveyance as will induce the product of one district to compete with another in the same market.

“The power of granting special rates thus permits a development of trade which would not otherwise exist, and it is *abundantly evident that a large portion of the trade of the country, at the present time, has been created by, and is continued on, the faith of special rates.*”

“The conditions under which such rates are granted are so numerous that no special law could be framed to meet them.”

In 1872 still another special railway commission reported that the enforcement of equal rates was “inexpedient” and “impracticable,” giving the following excellent reasons:

“It would prevent railway companies from lowering their rates so as to compete with traffic by sea, by canal, or by a shorter or otherwise cheaper railway, and would thus deprive the public of the benefit of competition, and the company of a legitimate source of profit. It would prevent railway companies from making *perfectly fair* arrangements for carrying at a lower rate than usual, goods bought in large constant quantities or for carrying for long distances.”

The italics in the above quotations are mine. There is a great deal in the “art of putting things.” The principle which *necessarily* governs in fixing rates is here correctly and honestly stated in words which commend themselves to every man’s common sense, to be that of “*creating a traffic.*” This is distorted by prejudice into “*charging all that the traffic will bear*” and made the text of infinite lamentations over the perversity of railroad managers, prophecies of terrible but vaguely defined evils, both political and commercial, with which these misguided men are about to overwhelm the country and exhortations to the people to crush out the tyranny. Did space permit, and were figures obtainable, it would be exceedingly interesting to compare this tyranny with some others, in the amount and value of services rendered to the community at large, and the gross and net earnings received for the same. If the Census Bureau would only spare for this purpose about five per cent. of its insatiable curiosity about everything connected with railroads, and prepare a set of questions for each member of the honorable tyrannies of lawyers, doctors, bankers, brokers, grocers, butchers, bakers, farmers, hotel keepers, hackmen, undertakers, &c., some very interesting tables would result in comparing the gross and net earnings, and the value to the community at large of services rendered by a given number of each fraternity, and an equal number of miles of railroad.

These two evils, “discrimination and fluctuating rates,” are the result of unchecked competition. When a line competing for business with another line is dissatisfied with the proportion of business which it carries, it attempts to increase its proportion by reducing rates at the point of competition. Other lines discover the reduction and make greater ones; and the point of competition at once enjoys freight rates which are out of line with the rates from neighboring markets.

It has been found utterly impracticable to prevent these railroad wars by simple agreements between roads to maintain rates. Their

jealousy of each other is so great, and it is always so easy for shippers, who wish to secure the temporary advantages which such wars bring, to excite this jealousy by concentrating shipments on one line, or any other means to lead competing lines to believe that some advantage is being given by one of their number, that the history of all such agreements shows them to be mere ropes of sand. It is not unusual for such an adjustment, both of through rates from competing markets, and of local rates, to be arrived at as to give for a time pretty general satisfaction; at least as general satisfaction as the selfishness of human nature ever allows in the adjustment of matters involving pecuniary interests. But such agreements do not stay made, and it is in the wars which intervene so incessantly that unjust discriminations originate, and can not be always as easily removed.

How then can these railroad wars be put a stop to, and how can the adjustment of rates be so made as to satisfy the jealousy of competing markets?

Railroad managers have not been lacking in their study of this question, or their efforts to attain a solution.

Not having force to compel each other, and doubting the wisdom and policy of any compelling power, the principle upon which they have worked recently is, *to remove the temptation from every line to engage in a war of rates*. Certainly, if this can be done, we may hope for the best results. There would be no necessity for laws against arson, robbery, forgery, or even murder, if every temptation to commit these crimes could be taken away from mankind. None of us are inherently bad; let us hope, not even railroad managers themselves, and being delivered from temptation, a virtuous path is always the easiest. How can these temptations be removed?

The only solution devised by railroad managers is what is opprobriously called by the public, a pool. It is really an agreement between competing lines at any given point about to this effect: That if all will agree to maintain the equal rates, which have been generally arrived at by long struggles between the competing markets, in which each has had all the benefit of its geographical position and advantages, then any line which does an excess of business, above the average of former years, and above what would seem its natural share of the business, ~~the line which does the excess~~ shall compensate the line which is deficient in some satisfactory manner. It is hard to explain how such an effort to prevent discriminations and fluctuations should become so generally misunderstood.

No man can study the railroad problem intimately without becoming convinced that by far the *greatest good of the greatest number* would result from what the railroad managers *attempt* in their pools. The misrepresentations of their policy and efforts doubtless come from individuals who had been able to turn railroad wars to their individual

advantage. In such wars large shippers always have an advantage over small ones. Their business is sought by rebates and private concessions, while small shippers are disregarded. The large shippers in those markets where railroad wars have been common, are therefore often loth to see any arrangement by which rates will be maintained, however low those rates may be. In fact, large shippers seldom care a straw whether rates are low or high; their profits for the handling are the same in any case. Their whole care is to secure rates for their markets lower than those for competing markets, or rates for themselves lower than their neighbors. The large shippers too are men of influence and ability, and it is they who usually cry out against the pool. So the position of the railroad managers is that between the upper and the nether millstone. The public cry out, and justly, against fluctuations, rebates, and unjust discriminations. There is no power on earth to prevent fluctuations, rebates, and unjust discriminations but to remove the temptation to commit them. The only way to remove the temptation is to make some arrangement *equivalent* to what is called a pool; but against a pool, the large shippers have an especial antipathy. The pool cuts off their rebates and special rates. No law could cut them off, because they can always be made by some part of the line which lies out of the State, so that State law can never reach it. And even a general law by Congress could be evaded in a hundred ways. If A wishes to grind B's axe in consideration of B's doing a similar service for A, no human law, or police regulations, can prevent the little transaction. No law based upon *penalties* can ever regulate these matters. But let *temptation* be removed, and A's axe be taken care of in an axe pool, and odious as axe pools may appear to B, he will have to turn his own grindstone with his neighbors.

Theoretically, indeed, if the roads at a competing point have agreed among themselves to pool the business, they might then raise the rates to whatever limit the traffic would bear; and it is on this theory that the public is led to distrust and fear them. But there is one fact which is left out of view in these discussions. Should the roads at such a point fix the rates out of line with those in competing markets, the business of that place would be drawn to the competing markets, and every road centering there would be the sufferer. Self-interest alone will usually prevent any abuse of this power; which, in fact only exists in theory.

There have doubtless been complaints of the rates made by pools, but these complaints are universally, so far as I know, that the rates are not *positively* high, but only *comparatively* high, as contrasted with the rates from some other place.

Questions of this sort, as I said before, are of the greatest delicacy and difficulty of adjustment. The twelve apostles themselves could probably never give satisfaction if they had to adjust the rates between twelve competing markets. It is in fact, to my mind, rather a doubtful question

whether there *is* any such thing as *Justice* in settling such a question. To illustrate by an example away from home, in which none of us have any interest or feeling.

What should be the comparative rates from Chicago to the different seaports of the East, and of the South, Montreal, Quebec, Portland, Boston, New York, Philadelphia, Baltimore, Charleston, Port Royal, Savannah, Pensacola, Mobile and New Orleans. And what should be the comparative rates from St. Louis to these ports. And what from Cincinnati, Indianapolis, Louisville, and all other interior Western markets? Is there any principle which recommends itself to the human mind as one of *justice*, upon which these rates shall be adjusted?

The present relation which exists between them has been arrived at, not by any argument, or upon any theory, but by the struggles and wars of the different lines of transportation supplying these different ports. Each line of road has worked for itself, regardless of the interests of all others; and between them all, the rates have been at times depressed to figures which did not pay one-half of the cost of transportation, and bankrupted a great many of the roads engaged.

Then truces have come, such as are obliged to follow all wars; and the present adjustment of rates holds, simply because each line interested fears that any attempt to change it would result in more harm than good to itself. And, what it may surprise the general public to know is, that the earnest wish and secret hope of every one of these competing lines is, not to advance its rates but to get them a little lower, while their competing lines keep the other rates up. And should any principle ever be discovered and recognized as a principle of *justice*, but which would change the present adjustment in any material point, its application would immediately and greatly change the course of trade to and through these cities and enormously disturb the values of property in every one of them.

Boston, for instance, is further from Chicago than New York is. Now, should the principle ever be adopted of making all rates a *pro rata* per mile, the rate from Chicago to Boston would be so much higher than the rate from Chicago to New York, that all the foreign trade now going through the former port would be diverted to the latter. This, of course would be an enormous injury to every interest of Boston. In fact, no such principle ever could be enforced, for the lines injuriously affected by it would never submit to it, but would work at rates far below the cost of transportation for years, rather than give up their through business forever.

A fair illustration, however, of the actual working of one of these pools I give from the history of the Southern Railway and Steamship Association. The following table will show the rates in force upon cotton at Atlanta, the principal competitive point in Georgia, in 1875, at the formation of the Association, and those in force in 1879. To show, also, that the decrease in rates which resulted from the pool was

not confined to cities and competitive points alone, I give the rates also from Buckhead, a small local station about the center of the Georgia Railroad, being a fair sample of a little place of about two houses, having no influence, and neither asking or receiving any favors, viz:

COTTON RATES — FROM —	Year .....	PER 100 POUNDS TO		
		Savannah or Charleston	New York.	Boston.....
Atlanta.....	{ 1875	\$0 60	\$1 10	\$1 20
	{ 1879	45	70	75
	Decrease .....		15	30
Buckhead.....	{ 1875	74	\$1 24	\$1 39
	{ 1879	60	90	95
	Decrease.....		14	24

But whatever criticisms may be made upon either the purposes of the railroad pools, or upon the practical operations which have taken place under them at any point, I do assert most positively and sincerely that they have been resorted to by the railroad managers as the only solution which *their* experience in these matters has been able to suggest; and that any imperfections or abuses have been the result of neither carelessness nor indifference, but of the inherent difficulties of the problem itself.

And as an earnest of their honest intent to correct the abuses, and to arrive at just and fair solutions of questions between conflicting interests, the principle of arbitration of such questions, by the most disinterested and competent tribunals obtainable is universally recognized and adopted; and if either the State or the National Government would provide such tribunals, the railroad managers would be only too glad to avail themselves of their services.

The Railroad Commissions, both <sup>of</sup> in England and of Massachusetts, have accomplished the most valuable results by acting in this manner; not so much as arbiters over the railroads, as arbitrators between them and the public.

The Railroad Commission of Massachusetts has no power except to recommend and report. But this power has proved amply efficacious.

I quote from a letter of the Hon. Charles Francis Adams, dated February 20, 1879, to the Chairman of the Railroad Committee of the Massachusetts House of Representatives, a few paragraphs, giving a general view of what the Massachusetts Commission has attempted, and how it has succeeded, viz:

“Among the duties of the Commissioners, by far the most difficult and delicate, are those which arise out of its supervisory functions over

“questions between the railroad corporations and the community. Its  
 “jurisdiction in this respect is, I believe, peculiar to itself. It is com-  
 “pelled to receive all complaints against the railroads of the State, no  
 “matter how they may reach it, or to what they may relate, or whether  
 “coming from communities or individuals, and to investigate and find  
 “some remedy for them. In doing this the Commissioners have no  
 “power except to recommend and report. Their only appeal is to pub-  
 “licity. The Board is at once prosecuting officer judge and jury, but  
 “with no sheriff to enforce its process. This method of railroad super-  
 “vision is peculiar to Massachusetts; but I do not hesitate to say that I  
 “believe it is the best and most effective method which has ever been de-  
 “vised—the best for the community and the best for the corporations. It  
 “needs, I am confident, but to be developed and understood to be uni-  
 “versally adopted. In dealing with railroads as between railroads  
 “and individuals, it is futile to talk about laws, declaratory and  
 “~~pedal~~<sup>pedal</sup>, and the usual process of the Courts; except in extra-  
 “ordinary cases. The remedy through this process is too slow and  
 “too expensive, while the power and wealth of the corporations, as  
 “compared with individuals, is too great. It is altogether different  
 “in proceedings before this commission. There are here no tech-  
 “nicalities, or forms of procedure. The investigation takes place  
 “at once and upon the spot, and a conclusion is reached with no unneces-  
 “sary delay. That conclusion can not be enforced in law, and carries  
 “weight only in proportion to the reasons adduced in its support; but in  
 “practical experience the recommendations of the Board have almost  
 “never been disregarded. It is true they have sometimes been com-  
 “plied with under protest, and with the utmost reluctance; but they  
 “have almost invariably been complied with. First and last, they have  
 “covered all sorts of questions, from the putting on of a system of trains  
 “to the adoption of some improved appliance of safety—questions which  
 “could hardly have been reached in any other way. Statements of  
 “these will be found accompanying our reports during the ten years  
 “they have been issued; but only the more difficult are there given.  
 “The many other similar cases settled by private conference are nowhere  
 “recorded. I am very confident that this principle of public supervis-  
 “ion might be developed so as to work a complete solution of the rail-  
 “road problem as it presents itself in this country. To do this, however,  
 “it must be developed by men who are not only competent but who en-  
 “joy the confidence both of the community and the corporations. If  
 “they have not this they are powerless; if they have it, there is nothing  
 “they cannot bring about, no abuse they cannot correct.

“Having said thus much, I need not add that it is perfectly useless to  
 “expect this Board to develop into what it might be, and what it must  
 “be, if it is to be of any use at all, unless it is composed of men very care-  
 “fully selected for the position. They have nothing outside of them-



“selves to sustain them. If the Board is to consist of men of detail, or clerks, or professional office-seekers, or politicians, it may as well, in fact, had much better be abolished at once. Like other similar Boards so constituted elsewhere, it will speedily fall into contempt, and be swept away. Its incompetence could not long be concealed, and neither the corporations nor the public would tolerate it.”

I have said nothing as yet on a question, which has been recently discussed a good deal by some of the best legal minds in the country, as to the relation existing between the State and the railroads. I do not feel competent to discuss this question in its legal aspects, and in its practical aspects, it seems to me, there is very little in it. Whether or not the railroad shall be called a “public highway,” as canals and turn-pikes are, to-wit, by being free to all to put their own vehicles upon, is not a practical question. The magnitude of the business of the country is so great, and the speed which the public necessities demand, both for freight and passenger trains, is so high that accidents can only be avoided by having the entire control and the entire responsibility placed upon a single corporation. It would not even be safe for one corporation to own the track and maintain it, and another single corporation conduct all the transportation over it. There would be constant difficulties arising between them as to the improvements which the track demanded, the location and maintenance of additional side-tracks, water-tanks, stations and platforms, and when accidents occurred it would frequently be impossible to decide who was responsible.

When railroads were originally built, it was supposed that they might be used in this way; and the charters of many of the older roads in the United States contemplated and provided for it. But experience has shown its utter impracticability, and there is not a railroad track in the world, to my knowledge, that is used in this manner. It is therefore unnecessary to point out any more in detail, although it might be readily done, the impossibility of making public highways of railroads, in the old and original sense of that expression. Yet, while the railroad can never be a public highway in this sense, it is certainly a public servant, and subject to the control of the State to a sufficient extent for all practical purposes.

The State can condemn private property for public uses; but it can not take property, already devoted to public uses, from the hands of A and turn it over to B to apply to the same uses. The State can take a portion of A's farm for a public highway, or public works of any character; but it can not take a portion of A's farm to give it to B for a farm, nor can it take A's railroad and give it to B for a railroad.

The railroad is simply under State control to this extent: *it must sell its services to all applicants at reasonable rates without individual discrimination.* That is, where the conditions and value of the services rendered are identical the price must be the same to all. It might be claimed

theoretically, that the price should be the same to all where the cost of the service rendered is the same to the railroad. But, however this may sound in theory, I think I have fully shown above that this principle can not be applied in practice. It would be simpler and easier for the railroad if it could be. But the entire cost of the transportation of the country must be borne by the articles transported, just as the entire cost of maintaining any business, or any institution, must be borne by the interests or individuals benefited thereby. Governments must be maintained by those who are governed. The pavements and streets of a city must be maintained by the citizens who use them. Gas and water-works must be maintained by those who use gas and water. Banks must be maintained by those who avail themselves of their facilities. Hotels must be maintained by travelers; and lawyers, doctors, undertakers, butchers, bakers, and all other trades and professions must be maintained by those who have need of their services. So the products of the country which demand transportation must pay the expense of that transportation. And, just as in a government, all classes bear the burdens of taxation in proportion to their ability to support the same, and the benefits derived, so, in transportation, all classes of freight should contribute to the expenses of transportation in some proportion to the benefit derived from the same, and to the value of the services received. Whether or not, therefore, the railroad is to be called a public highway seems to me not a practical question.

The only practical inquiry before us is, *Who shall decide* the complicated and difficult and delicate questions as to how the burden of transportation shall be distributed, and what proportion of it shall be borne by each of the innumerable articles of trade and commerce under all the various conditions under which they demand transportation?

The present status has been arrived at, like the boundaries of the different countries in Europe, as the result of long struggles among the interests involved.

If a being of superior intelligence could be imported from another planet, with the power to regulate all such things on this, according to his idea of right and justice, he would doubtless make some great changes, both in the boundaries of the European countries, and in the freight rates and classifications of American railroads; and, perhaps, also in a few other sublunary matters. But I would hardly expect even his administration to give universal satisfaction. The idea of regulating rates by State supervision is somewhat akin to the idea of importing a new intelligence, and a new power, to influence and regulate what has heretofore been left to regulate itself by the "struggle for existence," as a Darwinian might term it. It is only to be regretted that this new intelligence will, after all, be merely human, and subject to like frailties with other men. There should be no objection, however, it seems to me, on the part of railroad managers to the experiment being made, but

they should heartily concur in the same, only advising that the attempt be made in such shape as to give the best promise of satisfactory results.

But, in the discussion of these matters before the public, there is a great parade of catch-phrases and political maxims, which have a very ponderous sound and, doubtless, often seriously disturb good people who do not fully understand them, but who imagine there must be some great danger, simply from the clamor that is being raised.

One of these maxims is, "where combination is possible competition is impossible." That is simply an assertion that, where combination is possible railroads, will certainly combine. But that proves nothing, for the question remains, is combination possible?

There are many degrees of possibility and many varieties of combination. It is earnestly to be hoped that so much combination may be found possible that, at least, *uniform rates may be maintained and unjust discriminations avoided.*

Railroad managers, impressed by the logic of facts and actual experience, *believe* that a certain degree of combination is the only possible cure of these evils, and are cautiously experimenting in that direction.

But even this very mild degree of combination is scarcely yet demonstrated to be attainable, and, as the proof of the pudding is in the eating, Stephenson's famous apothegm simply proves, if anything, that combination among railroads *is impossible.* For the clamor against what are, demonstrably, the evils of unrestrained competition is rising to heaven.

The difficulties in the way of railroad combination are plain, and are the same difficulties that prevent combination between all the Southern planters to raise the price of cotton. There are too many people raising cotton, and there are too many things that can be used as substitutes for cotton to a great extent. So there are too many railroads in the country, and there are too many rivers, canals, turnpikes, and too much ocean around the country, all of which can be used as substitutes for the railroads to a great extent.

Another one of these aphorisms of the day is, that "if the State does not control the railroads, the railroads will control the State." Why can not the same thing be said about the national banks, or about the lawyers, or about importers, or whisky distillers, or about manufacturers of all kinds? I have even heard some good Protestants say, that the State must control the Catholics, or the Catholics would control the State. This maxim, in short, seems to me to have about as much logic and good sense in it as Johnson's celebrated satire on such arguments: "Who drives fat oxen, should himself be fat."

The assertion that the railroad companies are charging "*all that the traffic will bear*" is another one of these ridiculous alarms that are being sounded over the country, to which I have already referred. If railroad companies thus monopolized all the profit of transportation, there would

be no business done in the country. No man does business simply for the pleasure of doing it; and the flourishing state of the commerce of the country, and the very existence of every firm in trade, and of every manufacturing enterprise proclaims the falsity of any such assertion. There is a profit in transportation; and, that the railroads have not received on the whole any undue proportion of it, is shown by the fact that so very many of them in the last few years have passed through bankruptcy, or narrowly escaped it. Of course, the railroad, like the merchant or manufacturer, likes to secure a liberal share of the profits; but the matter regulates itself like all other struggles between competing interests.

If a merchant or manufacturer is so circumstanced as to be able to derive an unusually large profit from his trade or his factory, some other merchant or some other factory will generally spring up to divide this profit with him. And if a railroad is so located as to be able to make larger returns upon the investment than the average investments of the community, another railroad line is sure to be built, to divide these profits with it, and for every single railroad which is able to secure larger dividends to its stockholders than average investments yield, there can be shown a thousand merchants and manufacturers who are securing profits on their investments *enormously* above the average.

There is one more of these catch-phrases on which I wish to say a few words, to-wit: That railroads "must not be allowed to charge more for short distances than for long distances." At the first glance I must admit that here does seem to be at least one rule to the universal application of which no one could reasonably object.

But, if the cases where it occurs are investigated, it will be found that the freight which is hauled a longer distance at the less rate is simply freight which *must be hauled at that rate, or not hauled at all*. If, then, the railroad is forbidden by the law to take it at the lesser rate, the law simply *prevents competition* to that extent. The railroad certainly does not choose the lesser rate for the long distance from any whim of its own. The lesser rate is forced upon it by circumstances. The less distant points then claim that the *railroad* is discriminating against them. But it is not the *railroad* that is discriminating; *it is the circumstances at the more distant point*, which would send the freight from that point by some other route unless the railroad was willing to accept the lesser rate.

A single example will illustrate: Corinth, Miss., at the intersection of the Mobile & Ohio and the Memphis & Charleston railroads, is 93 miles from Memphis and 328 miles from Mobile. A reasonable local rate on a bale of cotton from Corinth to Memphis would be say one dollar per bale. Memphis is about as good a cotton market as Mobile. Consequently all the cotton raised in the vicinity of Corinth will go to Memphis, unless the Mobile & Ohio rate to Mobile is made the same as the Memphis rate. Between Corinth and Mobile, however, on the line of the Mobile & Ohio road, are many stations where a great deal of cot-

ton is brought for shipment. We will take Tupelo as an illustration, 280 miles from Mobile. Now, if a dollar a bale is a reasonable rate for 93 miles, the rate from Tupelo to Mobile, 280 miles, might very well be two dollars. If, therefore, the Mobile & Ohio road competes in the market at Corinth for cotton, it will be charging less for the longer haul from Corinth, than for the shorter from Tupelo. And if the law should step in and forbid this practice, the Mobile & Ohio road would simply have to withdraw from competition at Corinth. The shipper at Tupelo claims that the Mobile & Ohio is discriminating against him, when it hauls Corinth cotton for a dollar and charges two dollars from Tupelo. But would it benefit him to have the road give up all Corinth cotton and withdraw from competition at that place? The Mobile & Ohio road could not afford to reduce at Tupelo, and twenty other stations similarly situated, and would simply have to withdraw from Corinth business. It would then be less able to reduce local rates at Tupelo and all other local points on its line; and nobody on earth would be benefited but the Memphis & Charleston Railroad, which would then have a monopoly of the hauling of Corinth cotton, and Corinth would lose the benefit of competition from the Gulf for her cotton.

Practical cases like this might be illustrated by hundreds. But these practical questions are not understood, or are obscured by the majority of the writers who are discussing the railroad problem. If they would only deal less in generalities and propose some sets of *figures*, the public would soon comprehend some of the difficulties of the problem, and the true inwardness of the proposed reforms. Judge Black, Mr. Thurber, and the New York Chamber of Commerce can doubtless enunciate many principles and theories which seem to be entitled to general acceptance. But if they will only work out their proposed results in *figures*, the railroad managers who are practical men will be under immense obligations and may probably even be willing to make some experiments for them. To begin with something easy and simple, these gentlemen might at least declare what adjustment they propose between the rates from Chicago to Boston, Chicago to New York, and Chicago to Baltimore. Let them come to the point, and let the country know exactly what they want. All of their *principles* are vague, and liable to misconstruction until they are crystallized into figures. Do they want these rates to be pro rata per mile, or do they want the rates to be the same, or do they want arbitrary differences? And, if the latter, what differences? And will they guarantee that the Boston and Baltimore Boards of Trade will cheerfully accept? As one of the railroad fraternity, I beg for *figures*, and not for theories. Figures are plain, and we know what they mean, and the people can understand them. Let us have a single page of proposed rates in preference to a volume of the most glittering generalities that the legal mind can propound. *Then* we will all know what we are talking about.

It will be no small matter to disturb the present adjustment of freight rates in the United States, however that adjustment has been brought about, and whether it is divinely fair or not. But if the reformers will only *give us the figures* on which their hopes and aspirations for the transportation millenium are based, the discussion on all abstract principles can be cut very short.

I have written to very little purpose if I have failed to make it plain that what it is desired to accomplish by legislation upon this subject is a task of great embarrassments. I think I can assert emphatically that no law can be framed, which can formulate any theory or principle to be of universal application in the regulation of railroad charges for transportation. As there are some processes in the arts which can not be confided to machinery, but which require the skill and touch of the human hand, so the niceties of the "railroad problem" can never be adjusted by any formula or by any law. The experience of all States and countries which have tried the experiment has borne out this conclusion. The device of a railroad commission is the only one which has in any way stood the test of experience. And the more unhampered such commissions have been by the laws creating them, the better the results they have been able to accomplish. The Massachusetts commission has probably accomplished greater results than that of any other State; and it has accomplished them without any legal power even to enforce its decisions. In making the experiment, therefore, in this State for the first time, I earnestly advocate a commission upon the same plan. With this in view, I have looked over the bills before the Committee, and will proceed to make some comments and suggestions upon their respective peculiar features.

I have before me copies of Senate bills Nos. 207 to 215, inclusive, and of House bill No. 171.

House bill No. 171 and Senate bill No. 212 provide for the appointment of a Board of Railroad Commissioners; the other bills seek to regulate railroad matters by direct legislative enactment, except Senate bills Nos. 213, 214, and 215. These last simply repeal the law at present in existence. The repeal of this law, I think, is demanded even more by the commercial interests of the State than by the railroads, as experience has shown it to be oppressive and injurious, while having no beneficial effect whatever. As it stands upon the statute books and has been interpreted by the Supreme Court, it is simply to this effect. That local freight shall not be charged more than one and one-half times as much per ton per mile as through freight. I was familiar with the history of the passage of this law, and I am very sure that it was not intended to be construed on a per mile basis, as the Supreme Court has construed it; but, without going into detail on that matter, the law now stands as stated. But if local freight shall not be charged more than one and one-half times as much as through freight per ton per mile, then through freight must be

charged at least two-thirds as much per ton per mile as local freight. Now, in the transportation of local freight, besides the expense of hauling, are the expenses of loading and unloading, billing, and the time lost by the car. Necessarily, therefore, for very short distances, such as five or ten miles, the local rate must be a high rate per ton per mile, because it includes these terminal expenses and time of the car, which, owing to its having to wait for schedules, can generally make a trip of fifty miles and return as quick as a trip of five miles. Suppose, therefore, that the rate on a bale of cotton hauled five miles is made twenty-five cents, or five cents a mile, this law will *compel* the through rate upon cotton to be two-thirds of five cents, or three and one-third cents per mile, say \$6.00 a bale from Montgomery to Mobile.

Again, this law does not apply to cotton going to New York or New Orleans or Savannah, as that is inter-state traffic, and not subject to State legislation. The effect of the present law then is, simply to place Mobile at a disadvantage in competing with all other markets. Innumerable other instances can be given, of its unequal operation, if desired. But I believe it is generally understood that its repeal is called for by everybody in the State who understands the question. I therefore pass on to the consideration of the other bills.

Bills 207 to 210 attempt to regulate freight and passenger rates by direct enactment. What I have said before is sufficient to show, I think, that this plan is injudicious and impracticable, yet, I will proceed to speak briefly on a few of the most objectionable points in the bills themselves: In the first place none of these bills set any limit of time within which suits under them must be brought. Without some such definite provision, the right would exist under the code for many years. Railroad corporations would be at a great disadvantage in meeting and defending suits, under these acts, after any lapse of time. The multiplicity of their transactions with the public, changes of employees, and impossibility of preserving for a long time complete records of every minute transaction, would make it impossible for them to make a fair showing for themselves, after the lapse even of many months. I think, therefore, there should certainly be attached to each of these bills an additional provision, that any suits brought under it must be entered within six months from commission of the act complained of. If any one is injured there is no reason why he should not seek redress at once, while the transaction is fresh.

To take up the bills now separately. The object of bill number 207 is, to require each railroad to exchange business with its connecting roads. I see no necessity for any legislation upon this subject whatever. It has always regulated itself in Alabama satisfactorily, so far as I know, to the entire community, except during a short period in the summer of 1880. Even then the railroads which were supposed to be discriminated against were able to protect themselves by means in

their own control, and to regain satisfactory arrangements after a very short time. All such connections at present, so far as I know, are satisfactory to all concerned and to the community; and I think the bill, as a whole, unnecessary. If, however, the committee should think otherwise, I suggest that at least in section one, line three, the words "and cars" should be stricken out. If the railroad company has cars of its own available, it should not be compelled to use and pay for cars of another road to pass over its line. In section three, line two, "one year" I think should be changed to "six months;" and to line four should be added, "and either party may require prepayment of freight and charges from the other."

Bill 208 seems to me exceedingly injudicious and ill-considered. It gives the right to fix all rates to *juries*. I am sure no reasonable man can justify or defend any such proposition. Neither the railroad nor the public would ever know what the rates were. They would differ in every county and in the same county at different terms of the Court. Juries would not be impartial, because every citizen has a moneyed interest in the cost of transportation, as much as he has in the price of corn, cotton and dry goods; and it is no more right or just to give him the power to regulate the price to be paid for one of these than the other. The penalties, too, which this law provides would practically be "*ex post facto*;" for the railroad manager could never tell whether or not his rates were a violation of the law, until after the event. This bill simply seems to me the very height of communism.

Bill No. 209 is a bill to prevent and punish rebates. If a Railroad Commission is decided upon by the Legislature, this act becomes unnecessary. The Commission can regulate all such matters better than a law. If, however, the bill is to be passed, I respectfully suggest the following modifications: In line four, after "any," insert "unjust;" in line five, after "made," insert "under the same circumstances and at the same time," and in line six, after "corporations," insert "shipping equal quantities of the same sort of freight." As the section stands, it prohibits *any* special reductions in freight rates. My modifications would make it prohibit only such as are *unjust*, and as are not made under the same circumstances and at the same time to all persons similarly situated. I also suggest the addition of a section as follows: "Sec. 4. The provisions of this bill shall only apply to freight destined to or coming from points without the limits of this State." Also, "Sec. 5. Suits under this act must be brought within six months after the act complained of." My object in suggesting section 4 is, that the section shall not; on its face, attempt to do anything that *can not be accomplished*. Freight to and from other States can not be controlled by laws operative only within the State. Contracts for rebates can be made by connections, and the statute evaded without difficulty; and to save unnecessary litigation, and not to tie the hands of Alabama lines



in competing with lines through other States, the intent of the statute should be unquestionable.

Bill No. 210 requires railroads to issue duplicate receipts to shippers upon application. I have never heard of this being refused, or of necessity for any such act. But if anybody desires its passage, I have no objection to suggest, only asking that suits under the act shall be barred after six months.

Bill No. 211 is intended to regulate the corporate business of railroad companies in this State. I think this bill exceedingly objectionable, on the following grounds: So far as existing corporations are concerned, where the rights of the stockholders are already defined by their charters and by-laws, the bill would be *ex post facto*. If its provisions are to apply to new corporations only, in my judgment it would prevent either home or foreign capital seeking investment in any new road in this State. It is entirely uncalled for, and strikes at imaginary evils. It would simply be a source of litigation and of blackmailing operations, enabling any person who wished to give annoyance to any railroad to buy a few shares of stock, and force the company to buy him out at an advance. Minority stockholders are already amply protected, both in law and in equity. Moreover, every single stockholder in any corporation voluntarily takes all the risks of being in a minority when he subscribes to, or purchases, the stock of any corporation. Is a stockholder in a railroad entitled to any more protection than a stockholder in a bank or factory? Again, the prosperity of all the roads in this State is greatly dependent upon their being Trunk Lines in the path of the products of the great West to the Gulf and Atlantic seaports. They are in competition for this business with the Trunk Lines passing through adjoining States on each side. They are dependent for this business on the co-operation and good will of their connecting roads in the States north of us, which gather the business, and have choice of routes over which to forward it. And the more the territory drained by these connections, the greater the business they can control.

Now, should it not be the policy of this State to encourage these connecting roads to take an interest in, and to feed, the Alabama roads? To feed them is to build them up; to lay them with steel rail, and equip them with first-class facilities; to add to the number of their employes, and the consumption of the wood from our forests, and the coal from our mines. To secure this good will and co-operation, foreign corporations must be induced and encouraged to take a pecuniary interest in our roads. There is not a road in Alabama whose original projectors did not anxiously seek foreign aid; and foreign capital built the majority of them.

The Chinese policy of building a wall around a State is foolish and wicked, and a State can no more isolate its railroads from all other interests than a county could.

The lowest local freight rates now prevailing in the State will be found on the roads controlled by the largest foreign corporations. It would be worse than unfair and unjust; it would be foolish to weaken or destroy in any way the interest of foreign railroads in building up and sending freight over Alabama railroads.

I earnestly trust that this bill will receive your condemnation; believing that the courts of Alabama already afford ample protection to the owners of stock in any railroad within our limits, and sure that such matters had best be left to the laws of trade and competition.

House bill No. 171 and Senate bill No. 212 are designed to establish a Board of Railroad Commissioners for the State. The bills are similar in their general outlines, the Senate bill being the most complete and thorough of the two. The latter bill provides that the railroad companies shall have the nomination of one of the three commissioners to be appointed. I think this a liberal and desirable feature, as tending to secure the services of an expert in railroad matters, which is equally desirable both for the railroads and for the community at large. The bill, however, disqualifies any one from being a Commissioner who owns any railroad stock or bonds. This provision seems to me both petty and unfair. It is petty because any man who would be influenced by an ownership of railroad stock or bonds would be purchasable by a direct offer of money. The strictest integrity must be looked for in a Commissioner, and if it does not exist it will not be secured by this qualification.

Again, it is unfair because every citizen of Alabama has a pecuniary interest in opposition to that of railroads. If a man owned railroad stock, his interest might be balanced on each side of the question; but if he has none, his interest will preponderate against the railroads. I do not, however, consider this a very essential matter, so I pass over the first three sections of this bill without any further comment.

Section 4 requires the Commission to revise all freight tariffs and make such changes as they deem necessary, and section 5 requires the Commission to hear and decide upon all complaints of extortion or discrimination.

In my judgment the latter section will accomplish all desired results without loading the Commission with the very onerous task of revising all the freight tariffs. Every tariff includes a classification covering from twelve hundred to fifteen hundred articles, and it requires long familiarity with such matters to adjust these articles in the different classes, and to understand all the conditions of each railroad in the State, which must be taken into consideration in adjusting its tariff, such as its physical characteristics, its grades and curves, amount and character of business, expense of maintenance, etc.

The Commission, when it enters upon its labors, will be new to them, and if too much is given it to do, its work can not be well done. By leaving it at least for a year or two to gain experience

by simply hearing and adjusting complaints, it could at least correct all evils of such magnitude as to lead to complaint, and would be better qualified at the end of that time for undertaking such a task as prescribed in section 4, should it then be deemed necessary. I do not believe, however, that it would then be found either necessary or desirable. Where no complaints are made it may be safely assumed that no great abuses exist. But should it attempt to revise all classifications immediately upon its appointment, I am sure it would give ground for many just complaints on the part of railroad companies by making unnecessary changes. The safe course to be pursued is not to see how *much* the State can interfere with the present management of the railroads—for doubtless the power exists to do very much which would be very unwise—but to see how *little* is absolutely necessary to be done.

Two of the Commissioners at least will be only theorists in railroad matters, and theorists compelled to act in such affairs are very apt to become experimentalists—where the experiments cost them nothing.

I think it very unwise to subject the railroads to any further experiments than may be necessary to adjust matters actually complained of.

The duties of the Massachusetts Commissioners are prescribed on this basis: They are not *required* to interfere with anything where there is no complaint on the part of any individual.

Section 7 prescribes that the expenses of the Commission shall be levied as a license tax upon the railroads. I think this section is decidedly unfair. The theory upon which the Commission is formed is that it is for the benefit of the whole people of the State. It is not to plunder the railroads, but to do justice between all interests. Then all interests should share in the expense; and, so far as I know, the Commissions in all other States are supported by the whole people, just as all other State institutions are. This is not only fair to all, but it puts the Commission on the footing that all such institutions should be placed. If they become useless the people grumble at the expense and abolish them. But if their support is thrown upon the railroads, the Commission might become entirely useless to the people at large, but there would be no call upon the Legislature to abolish it if the people did not have to bear the expense.

Section 9 enacts that no railroad corporation shall buy stock in any other railroad in the State without the consent of the Commission. I think this section also very unwise. It confers too much power to give to any set of Commissioners. It tends to drive railroad capital from the State, and ties the hands of lines within the State seeking to protect themselves against competing lines in other States. When such purchases are made they are always made in the struggle for through business; and, as I have shown before, the railroad lines which run through the State should certainly be left free to protect themselves by all necessary alliances against the consolidated lines on each side. If the history

of such purchases as have heretofore been made in this State is looked into, it will be found that they have invariably resulted in the lowering of rates on the roads purchased, and in improvement of the condition of the roads. There would be also many ways of evading this act. Individuals could make the purchase and accomplish the same results as if a corporation had purchased them. As all unnecessary legislation is obnoxious, I therefore trust that this section will not meet your approval.

Section 10 forbids contracts for pooling of business between competing roads. I have already explained that in my judgment the public hostility to such arrangements is founded in ignorance of their true intent and object and results, and has been incited by individuals who are interested in having railroad wars and rebates and fluctuations continue. I think that the power conferred on the Commissioners in section 5 will be found ample to regulate this matter; at least it will be until another meeting of the Legislature, when the Commissioners will have had some experience, and be able to report whether or not they think further legislation desirable.

Sections 11-16, 17 require the Commissioners to exercise a personal supervision over the physical condition of every road in the State, and to prescribe repairs and additions to rolling stock, and to investigate the causes of all accidents. I think this, too, is loading the Commission with onerous and unnecessary duties, and duties for which at least two of the members will have had no previous training and no special fitness. And the duties would be simply enormous. It might be very hard, too, upon a railroad to have improvements prescribed without providing the means with which to pay for them. Many of the roads in the State are very poor, and can not procure at once even what they know very well that they need; all of them have to study economy, and their own officers are the best judges of what is necessary, and how and when it shall be provided. And the law, too, already holds them rigidly responsible for any accidents which may result from false economy.

Section 12 gives the Commissioners and all witnesses whom they may summon the right to pass free over the railroads. This matter seems to me to be beneath the dignity of legislation, and I think this section would be pronounced unconstitutional. I don't believe that the State has the right to legislate that any person or corporation shall perform services for nothing.

Section 14 authorizes the Commissioners to require the several railroad companies to fence their roads. I think this section is unjust and oppressive. Fencing costs \$300 per mile and the law does not provide the money. It is very expensive to maintain, and it is often but a questionable security against accidents to stock. It is impossible to prevent gaps being made in the fences by persons who wish to cross; and when a fence is not maintained and stock once get inside, they are almost certain to be killed. Stock owners are already amply protected by special laws, and

I think that this matter can be left to regulate itself, as it does in all the adjoining States.

Section 15 requires the railroad companies to make annual returns of their business up to June 30th. Every road in the State now makes up an annual return; but they begin and end their fiscal year at different times. The making up of an annual return is very laborious, and I think that all the purposes of the Commission would be answered by simply requiring roads to send copies of their annual reports to the Commissioners *whenever they are made*. These annual reports to the stockholders are usually full and exhaustive on all topics; they are in print, the most convenient form for use, and the Commissioners elsewhere have power conferred to call for any special information they may need at any other time.

Section 21 requires the Railroad Commissioners, in fixing their rates, to consider what rate is necessary to yield a dividend of not exceeding eight per cent. on the value of the railroad. To so adjust any tariff as to make it yield any given dividend is *utterly impossible*. The Commissioners are already empowered to require that the tariff shall be fair and reasonable; and that, I think, is the only rule that can be practically applied. No one can foresee what the business of a year is going to be; and to attempt to fix a rate to give a certain dividend would require a knowledge of the future, long experimenting and frequent changes. Again, as scarcely a railroad in Alabama has paid its stockholders a dividend since the war, they might now be allowed profits on the whole investment represented by their capital stock, provided they can earn them *at fair and reasonable rates*; especially as the State does not guarantee them any dividend at all.

On the remaining sections I have no comment to make, but would suggest one in addition, to-wit: "That wherever freight or passenger rates are referred to in this act, they shall be understood to apply only to rates on traffic which does not come from or go beyond State limits." Inter-state traffic has been held by the courts to be subject only to Congressional legislation. I think I have already shown that State laws alone could not reach and control it under any circumstances. Their only effect, I am sure, should it be attempted to apply them to traffic coming from or going into other States, would be to injure the markets of this State, at the expense of markets in adjacent States. Mobile, for instance, would most certainly be injured, and Pensacola and New Orleans benefited, if any interference by State laws whatever is attempted with the rates from Mobile to New York. To make this matter, then, very clear, and avoid any misunderstanding whatever, I urgently ask that whatever legislation is decided upon, it be plainly and unequivocally stated on the face of each and every law that it is to apply only to traffic not destined to or coming from points beyond the limits of the State.

I must apologize to the committee for the length of my argument,

and for its lack of systematic arrangement. It has been prepared amid a pressure of daily duties, and many interruptions. I have endeavored to give only a practical idea of the questions before you for discussion, based on a long experience in such matters, and an honest effort to understand them and arrive at solutions for them.

In conclusion, permit me to emphasize one point only. There has been so much discussion of *how far the power of the State can go* in the regulation of railroad transportation, that the impression is being created that that is the only question in the matter. On the contrary, I think that is not even a part of the question at all. If it ever was it has been settled long ago that there is ample power, and a superabundance, to accomplish all that the community can ever need—and if it did not already exist it would doubtless be found. The real and only question is this: “Shall all the conflicting interests in transportation be left to adjust themselves under the laws of trade and of demand and supply alone; or shall a tribunal be set up over them, to which all shall bow; and if the latter, how shall that act?”

E. P. ALEXANDER.



